

No. 14,916

IN THE

United States Court of Appeals
For the Ninth Circuit

MILTON H. OLENDER,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

On Appeal from the United States District Court
for the Northern District of California.

APPELLANT'S CLOSING BRIEF.

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The argument of appellee consists of a statement of generalities by which it is sought to create a suspicion of guilt and on such suspicion uphold the judgment of the District Court. Nowhere do we find a mathematical computation which results in the establishment of either opening or closing net worths to a reasonable or any degree of certainty.

Appellee has not discussed the recent cases set forth in our opening brief.

APPELLEE'S STATEMENT OF THE CASE IS INACCURATE AND MISLEADING.

We here set forth, with references to the pages in appellee's brief, many misleading statements and inaccuracies in appellee's statement of the case:

(1) On page 5, it is alleged that appellant is a graduate of the University of California where he studied accounting and auditing. The record (R. 630) discloses that Olender graduated from the university in 1918 where he did study elementary accounting, cost accounting and auditing; that since his graduation in 1918, appellant has not taken any further courses or studies in economics, banking, accounting or auditing (R. 841).

(2) On page 5, appellee states that when Treasury Agent Blanchard called on appellant in 1947, appellant produced a check payable to George Goodman for \$1380, together with an invoice, and said that was the only transaction that he had with Goodman. Blanchard testified that Olender told him that he had done some business with Goodman but didn't know how much (R. 47); that the \$1380 transaction was the only transaction with the Goodman Agency that Olender could find; that Olender may have said it was the only transaction Olender was able to complete directly with the George Goodman Agency (R. 70). At all times from the beginning of the Government's investigation Olender identified his signatures on the six cashier's checks payable to Goodman totalling \$20,550 and the applications therefor. Treasury Agent Root so testified (R. 121) as did Agent Blanchard (R. 88-91).

(3) On page 7, appellee refers to Ringo's summary of information given to him by Olender showing cash in vault at the end of 1941, '42, '43, '44 and '45. (U.S. Ex. 19.) Ringo testified these figures were merely Olender's estimates from his recollection (R. 245-6); that he, Ringo, had told the Government agents a number of times that

the figures on Ex. 19 were guesses all the way through and the exhibit was merely work papers used in an attempt to refresh Olender's memory and that he had rejected the figures (R. 268).¹ Ringo also stated that in 1948 Monroe Friedman told him of the \$70,000 in safe deposit. (R. 257-9).

(4) On page 7, appellee states that Olender asked Ringo to leave the Asturias stock off the net worth statement. Appellee fails to add that Olender then told Ringo that the stock was valueless. (R. 189.) Olender testified that as a director of the company he considered the stock of no value. (R. 618-619); Defendant's Ex. "U" is a determination by the Internal Revenue Department that the stock became valueless in October, 1947; Ringo was not employed to make a net worth statement until 1948; George Horne, accountant for the Asturias Corporation, testified that he could not fix the date the stock became worthless and that he did not know whether on December 31, 1946 the assets of the corporation exceeded the liabilities (R. 333-4).

(5) On page 8, appellee in discussing the gifts of money from appellant's mother states that on the dates of the claimed gifts all the withdrawals from the mother's *Fresno* bank accounts were traced into other accounts of

¹In footnote 2 appellee states that these figures in Ex. 19, the Government used in its computations in U.S. Ex. 50; actually the Government only used the amount of \$50,000 at end of 1944 and \$7200 at end of 1945. The trial Court ruled that these figures could not be used by the Government as they were not corroborated by independent evidence. Under the doctrine of *Holland v. U. S.*, 348 U.S. 121, none of the figures on Ex. 19 could be used as none were corroborated by independent testimony.

the mother or the account of appellant's sister. This refers to the testimony of Mr. Coffman relative to accounts in *Bank of America* at Fresno (R. 367-381) and is set forth in our opening brief at page 21.

The net worth statement (U.S. Ev. 10) lists these gifts as follows: February 3, 1942, \$1000; March 31, 1943, \$1000; January 6, 1944, \$2000; July 5, 1944, \$2500; December 15, 1944, \$1000; January 2, 1945, \$3000.

Coffman testified that Mrs. Olender withdrew \$1000 in cash on March 24, 1942 (R. 391); that on June 29, 1944, Mrs. Olender withdrew \$3000 (R. 380); that the withdrawal slip has a notation for "Bonds", but whether the money was used for the bonds the witness could not state (R. 394).

Olender testified he went to Fresno where his mother told him the times she thought she had withdrawn money from the bank and given it to him (R. 643); that he did not go to the bank and check the records or dates (R. 342); that to his recollection his mother never gave a gift to his sister without making a like gift to him (R. 644); that his mother also had cash besides her bank deposits and that from whatever place she had it, she took the same amount of cash that she transferred into his sister's account and gave it to him (R. 643).

Defendant's Ex. "Q", a letter from Olender's mother dated July 11, 1944, states (R. 647):

"Milton dear: As I told you over the phone, I have \$7,500 in safe and will get a cashier's check for \$2,500 and bring it down with me when I come, which will be on July 21st * * *"

(Note this corresponds with the listing of a \$2500 gift in July of 1944.) Olender testified the letter referred to a gift to him of \$2500. (R. 649.)

Defendant's Ex. "AK", savings bank book of Molly Olender in the *Securities First National Bank*, Fresno Branch, shows a withdrawal of \$2500 on July 5, 1944; this was not testified to by Coffman.

The Government's proof related solely to Mrs. Olender's bank accounts in Fresno. She had other accounts which evidently were not examined by the Government. Thus, on U.S. Ex. 52, the Federal Estate Tax Return, and on Defendant's Ex. "P", the inventory filed in her estate in the California Court, she had a savings account in the Central Bank of Oakland, California, in which, at the time of her death, there was over \$8000.

Mrs. Olender the elder and her daughter each had their bank accounts in Fresno. Olender's bank accounts were in Oakland.

(6) On page 8, appellee states that Ringo had some reason to indicate on the net worth statement, U.S. Ex. 10, that \$20,000 of the bonds belonged to appellant's mother but that he couldn't remember what it was, and appellee refers to pages 221-2 of the record. Ringo testified that he inventoried the bonds as being those of Olender's mother from what he saw in the safe deposit box (R. 229); that the bonds had some marking showing that they were the mother's bonds (R. 230); that his recollection was that the bonds were in an envelope or in some other form identifying them as a group and there was something on the bonds that indicated they were the bonds of Olender's mother (R. 202-3).

(7) On page 8, appellee states that in the 1947 tax return of Olender, interest of \$1225 was reported which would equal the interest on \$33,000 of Treasury bonds. Olender testified that in 1947, his mother gave him the interest on her bonds and so he reported it in his 1947 income tax return; that in the years 1946, 1948, 1949, 1950 and 1951 the income on the \$20,000 of bonds was reported in his mother's income tax returns (R. 569).

(8) On pages 9 and 10, appellee states that the Government adopted the \$50,000 figure as cash in vault on December 31, 1944, by deducting from \$75,000 as cash in vault on December 31, 1941, a withdrawal of \$10,000 deposited to Olender's personal account and \$15,000 used to create the trustee accounts for his three children. However, the record establishes that the trustee accounts for the three children were not opened until November of 1945 (Defendant's Ex. "AA"; R. 625; U. S. Ex. 10) and that the \$10,000 was deposited in Olender's personal account in 1945 (Defendant's Exs. "W" and "D"). Thus, the Government, having erroneously deducted \$25,000, leaves the amount of cash on hand as of December 31, 1944, in the sum of \$75,000.

(9) On page 10, appellee states that the Government included \$7724 as an asset at the end of 1945, this being a cashier's check purchased on November 19, 1945 and outstanding at the end of that year. The Government fails to point out that this was the result of a cash disbursement made in 1944. Therefore, this amount must be deducted from the assets at the end of 1945 or an equal amount credited to the opening net worth at the end of 1944.

(10) On page 11, appellee points out that Terrance Gambord Glick, co-executor with appellant of their mother's estate, filed in 1952 a Federal Estate Tax Return which did not list the \$20,000 in Government bonds. On the Federal Estate Tax Return (U.S. Ex. 52) there is written in pencil "U. S. Government Bonds 20M". It will be noted that appellant did not sign or file this Federal Estate Tax Return, *which contains pencil notations of other assets.*

Appellee makes no statement of the correspondence between Treasury Agent Reed and Olender in 1946 wherein Olender explains to the Government that on November 20, 1945 he purchased \$20,000 of Government bonds for his mother, on written instructions from his mother (R. 560-1), nor is mention made of the letters from Olender's mother relative to the purchase of these bonds (R. 563, 565.)

(11) On page 10, appellee states that Olender "was unable to state whether the interest on \$1720.17 reported on his 1946 tax return included the amount received for the bonds in question (the mother's \$20,000). (R. 744-745, 835-837.)"

Olender gave no such testimony. On pages R. 744-5, Olender testified merely that he could not determine what amount of bonds produced the interest reported. On pages 835-837 of the record, Olender was testifying as to the sale of \$25,000 of his bonds in 1946 (the mother's bonds were not sold until 1953, R. 518); that they were coupon bonds and when sold between interest periods the seller received in addition to the value of the bonds a prorata of the interest as of the date of sale and the previous

interest date. Then Olender, in reply to a question by the prosecutor, emphatically stated that the interest reported in his 1946 return did not include any interest on his mother's \$20,000 bonds. (R. 837.)

(12) On page 11, appellee states that when appellant was first questioned by Agent Root he stated that the money for the purchase of the bonds was from earnings of the Army and Navy Store, and appellee refers to pages 98-99 of the record. Beginning with pages 94 to 100 of the record, Agent Root was testifying as to the bond interest reported in Olender's income tax return for the years 1944, 1945 and 1946. The statement on page 98 of the record that the bonds, for which the interest was reported in the income tax returns, had been purchased with funds from the Army and Navy Store, *related only to Olender's bonds.*

(13) On page 15, appellee indulges in some computations as follows: Assuming that Olender had \$75,000 in 1943, that in January, 1944 he removed \$20,550 to purchase the Goodman checks; that in June he withdrew \$1500 for deposit in his personal bank account; in July \$1500 for deposit to the Olender-Alkus account; \$3000 in December to purchase merchandise from Barney's (in reality only \$2160 (Defendant's Ex. "T", R. 616)) and \$8000 to purchase Treasury bonds. The Government concedes these sums must have come from his safe deposit box as his bank accounts showed no such withdrawals and then appellee arrives at the figure that there would only have been \$61,000 left at the end of 1944; *but this figure is \$11,840 higher than the Government seeks to give Olender credit for at the end of 1944.*

Appellee does not credit this cash with at least a \$2500 gift from the mother in July, 1944 (see (5) above), which raises this amount to \$14,340 more than the Government seeks to give Olender credit for at the end of 1944, making total cash of \$64,340.

In using the foregoing computations, appellee fails to take into consideration any of the money that was put into the safe deposit box during this period of time. The evidence shows that interest on bonds, income from the Fresno property and other receipts which were not deposited to Olender's bank accounts went into his safe deposit box.

Agent Whiteside testified that he didn't attempt to compute the differences in cash on any of the pertinent dates because Ringo had testified there were numerous entries into the safe deposit box and no record kept of the moneys going in or out. (R. 464.) Both Olender and Ringo testified that money went in and out of the box. The net worth statement (U.S. Ex. 10) states "during the years 1941-1945, inclusive, there was a constant switching of funds between this cash in vault, personal bank account, etc. . . ."

(14) On page 12, appellee refers to the investigation made by Agent Whiteside. All this refers to what was done by the Government prior to the first trial. New and additional leads were given to the Government at the first trial, none of which were followed by the Government agents prior to the second trial.

(15) On page 12, appellee refers to an insurance policy taken out in 1946 with a coverage of \$64,850. The testi-

mony of Foley, the insurance man, was that this policy was a continuation of a prior policy (R. 356), which became effective December 24, 1942 and was renewed in 1943 and again in 1944 (R. 357); that there was no record showing when any of the articles covered by the policy were actually paid for. (R. 360.) That many of the articles covered were added to the policy after December, 1946. (R. 384-387.)

(16) On page 18, appellee discusses the ownership of the \$20,000 United States bonds. Appellee makes no mention of the correspondence with Reed in 1946 nor of the letters from Olander's mother to appellant relative to the purchase of these bonds. Appellee does admit that these bonds were placed in an envelope with the mother's name upon it.

(17) On page 18, appellee states that the cashier's check for \$7724 had its origin in the sale of 280 sailor suits by Leavy. However, these 280 sailor suits were part of the purchase of the Goodman suits in early 1944. Once again, we have the situation where this amount must be deducted from the net worth at the end of 1945 or a like amount credited to the opening net worth at the end of 1944.

(18) At the bottom of page 17, appellee states that Leavy admitted that the invoice he sent to Lerman with the 200 suits showed they were mostly small sizes. The record shows that Lerman testified that the 200 suits were mismarked and that the suits were much larger than those marked (R. 527-528); that he notified Leavy of the mismarking of the suits (R. 537). Leavy testified that Olander complained to him the suits were mismarked and that

Leavy communicated such fact to Goodman (R. 862); that when he sold the suits to Lerman and made out the invoice, he knew he wasn't shipping the proper sizes but that Lerman had tailors who could fix them; that he didn't tell Lerman the suits weren't properly marked and that Lerman complained to him that the sizes of the suits didn't correspond to the markings (R. 871).

REPLY TO APPELLEE'S ARGUMENT.

As demonstrated above, appellee's statement of the facts of the case contains 18 inaccuracies and misleading statements and on these inaccuracies and misleading statements bases its entire argument. *The premise being erroneous the conclusions drawn by the government are equally erroneous.*

The government bears a greater burden than merely to throw a mass of figures at a jury and from these figures ask the jury to return guilty verdicts. The Government cannot prevail unless it establishes to a reasonable certainty the opening and closing net worth of any person charged with income tax evasion.

(a) Footnote 12 on Page 23 of Appellee's Brief.

Here appellee states it had no information as to the disavowing of the \$50,000 cash figure and the claimed \$70,000 cash as of December 31, 1944 until the first trial of the case, and then argues that a trial need not be adjourned to run down such a lead. Such is not the situation here. This was the second trial of the case and, so far as the Government was concerned, it was its duty

to run down all leads of which it had knowledge prior to the second trial, just as if there never had been a first trial.

The appellee argues that *likely* sources of unreported income were proved at the trial. No such proof appears in the record. The \$20,550 Goodman transaction was fully explained. This took place in early 1944. The Government established the cashier's checks were purchased with cash, which could only have come from Olender's safe deposit box. Olender testified that as the suits were too large and mismarked he could not sell them as he had no tailoring facilities (R. 588); that he held the entire transaction in suspense pending an attempted adjustment thereof and did not enter the purchase price in his books or include the suits in his inventory (R. 597). Olender did enter the first \$5000 received from Leavy as a capital investment (R. 594) and at all times admitted his signatures on the applications for the checks.

If the net worth increases at the end of 1945 could be attributed to the sale of these suits, then Olender must be given credit for the cost thereof at the end of 1944, thus one entry would offset the other. The \$20,550 was expended prior to Monroe Friedman seeing the \$70,000 in the box in May.

The Sanchirico testimony will be discussed under another heading.

(b) Evidence of Net Worth Increases.

Appellee argues in generalities that the various aspects of the evidence justified the conclusion that Olender had net worth increases in 1945 that were taxable income.

Nowhere does appellee compute the effect of its claimed proof.

Nowhere does appellee attempt to refute the computations set forth in our opening brief; nor to discuss the cases cited by us therein.

In other words, appellee merely indulges in a series of guesses on which it bases its final contention.

On April 12, 1956, the Court of Appeals for the First Circuit decided the case of *Thomas v. Commissioner*, F. 2d (not as yet reported), wherein the net worth method was involved, including the question of how much cash Thomas had on hand. The Court commented as follows:

“If respondent is permitted to make an arbitrary guess as to the proper figure for the cash on hand, there would seem to be no reason as a general proposition why similar guesses should not be made as to each of the constituent elements comprising the taxpayer’s net worth. Under these circumstances the entire net worth technique becomes nothing but an elaborate accounting sham lending a semblance of system and logic to a determination of deficiency which could have no greater validity than the original guesswork upon which it was based.”

On page 24, appellee brands as bizarre Olender’s *belated* story that he had \$70,000 in hidden cash in December, 1944. There is neither anything bizarre nor belated about this claim. Evidently appellee is referring to Olender’s testimony at the first trial which took place in September, 1952; but as early as 1948 both Olender contended and former Judge Monroe Friedman made an affidavit to the

effect that there was \$70,000 in the safe deposit box in May of 1948, four years prior to the first trial.

According to the Government, Judge Monroe Friedman, Morris Lerman, Louis Leavy and appellant are all liars.

On page 25, appellee argues that large unrecorded deals with Goodman considered in conjunction with the use of cashier's checks and currency, indicate a probable black market source for the claimed unreported income.

It must be noted that *all the Goodman transactions were in 1944* and therefore could not have produced any increase in net worth during 1945 as his net worth at the end of 1944 would have to be increased by the cost of such suits.

There was nothing secret about the transactions. The bank had records of all purchases of cashier's checks and to whom payable.

There is no evidence of black market dealings, and even if so, here there is no evidence as to what, if any, profit was derived therefrom. In *Thomas v. Commissioner, supra*, it was claimed that as Thomas had some corporate interests this provided a likely source to account for any increase in net worth; the Court disposed of this contention as follows:

“We think this argument assumes the very fact to be proved. There must be some independent showing that the corporation might be the source of the unreported income, not merely a negative inference arising from the prior assumption that the increases were taxable and therefore must derive from the corporation since no other taxable source is apparent.”

On page 26, appellee merely asserts that it correctly took \$50,000 as being the cash on hand at end of '44, that the \$20,000 bonds were Olender's and not his mother's and that the \$7724 check was correctly included as an asset at the end of '45. Then appellee claims the assumption as to the bonds was correct because Olender admittedly included the interest in his 1947 return and that the interest reported in 1946 of \$1720.17 must have included the interest on the \$20,000 bonds because it was sufficient to cover that amount, etc.²

On page 27, appellee concedes that under the Court's instruction to the jury the opening net worth had to be credited with \$70,000 cash.

Appellee's criticism of the case of *Smith v. United States*, 348 U.S. 147, is without merit. The *Smith* case holds that no elements of the offense can be established merely by the uncorroborated extrajudicial admissions of an accused. Whether, as appellee contends, this holding does not require corroboration of every item on a net worth statement, *it certainly requires corroboration of each and every item relied on by the Government.*

Then appellee argues that the amount of cash on hand is not an element to be established by independent testimony, an argument that is in direct conflict with *Holland v. U. S.*, 348 U.S. 121; *Smith v. U. S.*, 348 U.S. 147; *Bloutis v. U. S.*, 219 F. 2d 782, and *United States v. Cosello*, 221 F. 2d 668, cases cited in our opening brief. To bolster its argument appellee then refers to the use, as

²This contention we fully answered above in subparagraphs (7) and (11) under the heading "Appellee's Statement of the case is inaccurate and misleading."

it claims from the net worth statement, of the cash in store register, valuation of household furniture, real estate, etc. These figures were not allowed to be used by the Government because they were set forth in the net worth statement but only because they were set forth in the stipulation. (U.S. Ex. 11.)

On page 30, appellee again sets forth matters which it claims justified the finding that the \$20,000 bonds were Olender's. Again no reference is made to the letters to Reed in 1946, the letters from Mrs. Olender to her son or to the inventory taken by Ringo in 1948. (See Opening Brief, pp. 76-78.)

On pages 30-31, appellee gives but a skimpy resume of the evidence relating to the 822 Goodman suits. Nowhere does appellee even consider the cost of these suits as increasing Olender's opening net worth. Granted they were purchased in early 1944 for \$20,550, there is no evidence by the Government as to the sale of any of these suits; the only evidence is that of Olender, Lerman and Leavy. As none of the suits were sold in 1944, Olender's net worth must be increased by \$20,550 more than contended for by the Government. Even if some were sold during that year, the proceeds must be added to Olender's assets at the end of '44.

The burden was not on Olender to establish his opening or closing net worth, or exactly how much cash he had on hand; as said in *Thomas v. Commissioner, supra*,

“The burden upon the taxpayer is not to show the correct amount—but rather that the determination of respondent is without substantial support.”

The check for \$7724 was included as an asset at the end of '45 by the Government. As we have twice demonstrated, if included as an asset at the end of '45 it must be added to the opening net worth, or eliminated entirely. (See Opening Brief, pp. 73-75.)

Appellee has not answered any of the arguments, based upon cited authority, we advanced in our opening brief; nor has it even attempted to distinguish the authorities we rely upon; nor has it set forth one set of computations establishing any unreported taxable income. All it has done is to assert that from all the evidence, including guesses and suspicions, the verdicts must be upheld.

On page 29, appellee asserts that appellant does not deny a criminal intent to evade tax. Olender's pleas of not guilty and his defense constitute a complete denial.

The Government utterly failed to establish to a reasonable, or any, certainty Olender's net worth at the end of 1944 and 1945.

(c) Net Worth Increases in 1946.

Attempting to uphold the verdicts as to 1946, appellee once again ignores the record and the uncontradicted evidence and resorts to mere generalities.

As the opening net worth was never established to a reasonable certainty, the net worth at the end of 1945 was never established; *ergo*, the opening net worth for 1946 was never established.

Appellee again ignores the \$20,000 bonds, the check for \$7724, the question of the 822 Goodman suits in 1944, the cash expenditures made in 1945 and 1946.

Never does appellant give the cash on hand at any time credit for interest on bonds, or credit for income from Olender's Fresno property, or for gifts from his mother.

Olender testified that from his interest in the partnership properties he received \$3532.57 in 1945-6 which was reported in his income tax returns (R. 612-614). (U.S. Exs. 1 and 3; Defendant's Ex. "S".) He further testified that all this money went into his safe deposit as did the interest on bonds. (R. 614.)

On page 33, appellee states that if the opening net worth is increased by allowing \$70,000 cash on hand then the understatement of income for 1945 remains at \$26,900; but if the \$20,000 bonds and the check for \$7724 is deducted *there remains no unreported income.*

Appellee argues (p. 34) that even conceding \$70,000 at the end of 1944, that this amount was completely absorbed by his understatement of income for 1945. Just what is meant by this, we freely confess, is not understood by the writer. No figures are supplied for this conclusion. It is a mere assumption on the part of appellee.

Not one of our contentions contained in our opening brief, pages 83-84, have been met or answered by appellee.

(d) The Testimony of John Sanchirico Has No Probative Value and Was Erroneously Admitted.

Appellee seeks to uphold the admission of Sanchirico's testimony on various grounds. First, because it tended to impeach Olender's testimony as to how many suits he purchased in 1944. Hearsay does not become admissible merely because it may tend to impeach.

Next, appellee argues that because Goodman was dead the records of some corporation became admissible. The statement answers itself; besides, these records were not the records of Goodman or his business.

Lastly, appellee argues that the records were admissible under the shop book rule. These records were not records of transactions between the Seagoing Uniform Company and Olender, they were records of transactions between the Seagoing Uniform Company and Goodman.

Appellee argues that we cited no authority for the objection that these records were hearsay. No authority is needed to establish the hearsay character of transactions between third persons out of the presence and without the knowledge of the accused.

All of Sanchirico's testimony relating to the arrangements between Goodman and the Seagoing Uniform Company was rank hearsay and never should have been admitted in evidence. Eliminating this hearsay testimony, the records of the uniform company become valueless and have no probative effect.

There was no evidence to show that these goods were actually shipped; no shipping receipts or records showing charges were ever produced.

Each document was headed "Ship to George Goodman". Under this is a list of stores, etc.; some merely named Army and Navy Store in Oakland. Others contain in pencil the words "Milt Olender", although there is no evidence to show who wrote this or when or where it was written.

We ask the Court to look at these United States Exhibits 66 to 71, inclusive.

Olender denied ever having received such shipments and there is no evidence that he ever did. There were no express or drayage tags produced and no receipts signed by Olender as consignee as was the case of the S22 suits purchased from Goodman in early 1944.

It is entirely probable that there was an overlapping of records and that some of these particular ones were related to the first purchase of S22 suits or the subsequent shipment of suits amounting to \$1380.

Sanchirico testified that he was not there when the records were made and that the invoices were not sent to the alleged consignees, but were sent to Goodman (R. 906); *that he did not know whether the goods were actually shipped and that he was merely testifying as to custom* (R. 911). Appellant cannot be bound by such testimony or by such transactions.

CONCLUSION.

The correct record as set forth in appellant's briefs, as distinguished from the inaccurate statements of fact made by appellee, conclusively demonstrates under pertinent authorities that the Government failed to establish to a reasonable certainty or to any certainty at all the opening and closing net worths of Olender. The judgments should be reversed.

Dated, San Francisco, California,
June 25, 1956.

Respectfully submitted,

LEO R. FRIEDMAN,

Attorney for Appellant.